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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,611	11/04/2003	Kenneth Bloemer	BMW / 02	6510
26875	7590	09/02/2004	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			MAYO, TARA L	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/700,611	BLOEMER ET AL.	
	Examiner	Art Unit	
	Tara L. Mayo	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 23-28 is/are rejected.
- 7) ☒ Claim(s) 18-22 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20040210</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim 15, the scope of the claimed invention is rendered indefinite because it is not clear what feature or limitation is intended to be encompassed by the recitation of "a scissor mechanism."

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point

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out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1 through 14, 16, 17 and 23 through 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meeker (U.S. Patent No. 4,911,499) in view of Cuervo (U.S. Patent No. 4,681,096).

Meeker '499, as seen in Figures 1, 4, 6 and 7, show an apparatus (10) for reciprocating an infant support, the apparatus comprising:

with regard to claim 1,

a frame (12);

a receiving member (14) configured to receive the infant support (col. 5, lines 1 through 4), said receiving member movable relative to said frame for reciprocation in a substantially vertical direction (col. 4, lines 46 through 49); and

a motive device (74) coupled to said receiving member and configured to reciprocate said receiving member relative to said frame at a frequency in the range of approximately 30 cycles per minute to approximately 90 cycles per minute (col. 6, lines 59 through 62);

with regard to claims 4 through 6,

wherein said motive device is configured to reciprocate said receiving member relative to said frame at a frequency in the range of approximately 40 cycles per minute to approximately 90 cycles per minute;

with regard to claim 7,

wherein said motive device includes an electric motor (col. 5, lines 62 through 65);
with regard to claim 8,

further comprising a battery electrically coupled to said electric motor;
with regard to claims 10 and 17,

further comprising a counterbalance mechanism (106) operatively coupled to said motive device, said counterbalance mechanism configured to provide a substantially uniform load on said motive device while said motive device reciprocates said receiving member;
with regard to claim 11,

wherein said counterbalance mechanism comprises a biasing member (112) operatively coupled to said motive device;
with regard to claim 12,

wherein said counterbalance mechanism comprises a biasing member (112) operatively coupled to said receiving member (col. 6, lines 17 through 23);
with regard to claim 13,

wherein said counterbalance mechanism is adjustable to accommodate different loads on the apparatus (col. 6, lines 46 through 58);
with regard to claim 14,

further comprising a reciprocating assembly (106 and 112, in combination) coupled to said receiving member and configured to constrain movement of said receiving member relative to said frame such that said infant support moves in a substantially vertical direction;
and
with regard to claim 16,

wherein said motive device comprises a motor (74) having an output shaft (80) coupled to said receiving member by a first crank member (82), whereby rotation of said first crank member about said output shaft reciprocates said receiving member.

Meeker '499, as seen in Figures 1, 4, 6 and 7, show an apparatus (10) for reciprocating an infant support, the apparatus comprising:

with regard to claim 23,

a frame (12);

a receiving member (14) configured to receive the infant support (col. 5, lines 1 through 4), said receiving member movable relative to said frame for reciprocation in a substantially vertical direction (col. 4, lines 46 through 49);

an electric motor (74) coupled to said receiving member and configured to reciprocate said receiving member relative to said frame at a frequency of approximately 30 cycles per minute to approximately 90 cycles per minute (col. 6, lines 59 through 62); and

a counterbalance mechanism (106) operatively coupled to said electric motor, said counterbalance mechanism configured to provide a substantially uniform load on said electric motor while said electric motor reciprocates said receiving member.

Meeker '499 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claims 1 through 3 and 23,

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the motive device being configured to reciprocate the receiving member relative to the frame with a displacement of approximately 2 inches to approximately 6 inches; and with regard to claim 9, a spring-wound mechanism.

Cuervo '096 expressly teaches rocking an infant with a displacement of three inches at either thirty or sixty cycles per second to imitate normal head to toe rocking (col. 2, lines 4 through 14).

With regard to claims 1 through 3, it would have been obvious to one having ordinary skill in the art of infant supports at the time the invention was made to displace the receiving member three inches as taught to be desirable by Cuervo '096 for imitating normal head to toe rocking.

With further regard to claims 1 through 3, it would have been obvious to one having ordinary skill in the art of infant supports at the time the invention was made to determine a value of displacement for the receiving member of the device shown by Meeker '499, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With regard to claim 9, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute a spring-wound mechanism for the spring

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mechanism (112) shown by Meeker '499 since they are known functional equivalents and the selection of either would be within the level of ordinary skill in the art.

With regard to claims 24 through 28, the method steps recited therein are inherent to the use of the device shown by Meeker '499 as modified above by Cuervo '096 or the statement of obviousness. The Examiner notes the teaching by Meeker '499 for a "second vertically reciprocating motion" in column 6 on lines 37 through 40.

Allowable Subject Matter

6. Claim 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. Claims 18 through 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

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Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 703-305-3019. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


FLM

25 August 2004


Thomas B. Will
Supervisory Patent Examiner
Group 3600